

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

09-CR-6030CJS

JASON E. TUTTY,

Defendant.

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**GOVERNMENT'S MOTION FOR A  
PROTECTIVE ORDER AND ORDER TO SEAL**

**THE UNITED STATES OF AMERICA**, by and through its attorneys, Kathleen M. Mehltrittter, Acting United States Attorney for the Western District of New York, and Craig R. Gestring, Assistant United States Attorney, hereby moves the Court for a protective order pursuant to Title 18, United States Code, Section 3509(d)(1) and for an Order permitting the filing of victim impact statements under seal, for the reasons set forth below.

1. On February 10, 2009, defendant Jason E. Tutty pled guilty to a one-count Information charging him with a violation of Title 18, United States Code, Section 2252A(a)(2)(A), knowingly receiving child pornography. Sentencing is scheduled for May 11, 2009.

2. Defendant Jason E. Tutty knowingly possessed more than 150 images of children engaged in sexually explicit conduct, some of

which depicted prepubescent minors and minors under the age of twelve years. Some of the images of child pornography contained children whose identities are known.

3. Child pornography images permanently memorialize the sexual exploitation of the victims depicted. These images are most often circulated on the Internet, allowing untold numbers of people to view this victimization again and again. Unfortunately, most of these children have never been identified. However, some children have been identified through the efforts of law enforcement. Regardless of whether they have been identified, every child depicted in images of child pornography that have been distributed, received, or possessed in violation of Federal law, as charged in Federal district court, has been "directly and proximately harmed as a result of a commission of a Federal offense." Title 18, United States Code, Section 3771(e). Similarly, every child depicted in such images, regardless of whether the images are the basis of federal charges, has "suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime." Title 42, United States Code, Section 10607(e)(2).

4. The Government has complied with the Justice For All Act, Title 18, United States Code, Section 3771(b), by notifying the victims about the charges and plea. One of the victims has

submitted a victim impact statement outlining how the distribution and downloading of his/her image(s) has negatively affected him/her. Title 18, United States Code, Section 3509(d) authorizes the filing under seal of the name or any other information concerning a child. Furthermore, Title 18, United States Code, Section 3509(d)(1) requires the Government, the defendant and defense counsel, among other things to "keep all documents that disclose the name or any other information concerning the child in a secure place and shall disclose the documents only to persons who by reason of their participation in the proceeding have a reason to know the information." Additionally, Title 18, United States Code, Section 3771(a)(8) makes clear that a victim has "the right to be treated with fairness and with respect for the victim's dignity and privacy." Since the victim impact statements contain the names of the child victims as well as other identifying and personal information, the government requests the Court to seal the victim impact statements and issue a protective order limiting disclosure.

5. Pursuant to Title 18, United States Code, Section 3509(d), it is further requested that the material and copies referenced in Paragraph 4, shall not be disclosed to the media or any other person or entity except to those persons who, by reason of their participation in the proceeding, are entitled. Nothing shall prohibit a party from using the material in connection with

the proceedings in this litigation, including appeal or any collateral enforcement proceedings.

6. It is further requested that copies shall not be provided to third parties except those employed or engaged for the purpose of this litigation, who shall also be bound by order of the Court.

7. Finally, all copies should be returned to the United States Attorney's Office for appropriate destruction upon the conclusion of the case.

DATED: Rochester, New York, February 23, 2009.

Respectfully submitted,

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Acting United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2009, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant(s) on this case:

Robert G. Smith, Esq.

s/ KIM M. PETTIT